Calendar No. 71

100TH CONGRESS
1st Session

SENATE

REPORT
100-25

RESOLUTION PERTAINING TO THE PRESIDENTIAL CERTIFICATION THAT PANAMA HAS FULLY COOPERATED WITH THE UNITED STATES ANTI-DRUG EFFORTS

MARCH 27 (legislative day, MARCH 24), 1987.—Ordered to be printed

---

Mr. PELL, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany S.J. Res. 91]

together with

ADDITIONAL VIEWS

The Committee on Foreign Relations, to which was referred the joint resolution (S.J. Res. 91) disapproving the certification by the President under section 481(h) of the Foreign Assistance Act of 1961, having considered the same, reports favorably thereon with an amendment and recommends that the joint resolution as amended do pass.

PURPOSE

The purpose of this resolution is to seek additional information concerning the President's March 2 certification on Panama and require a report thereon.

COMMITTEE ACTION

On March 24 and 26, 1987, the Committee on Foreign Relations met to consider S.J. Res. 91. At the March 26 meeting, Senator Dodd, on behalf of himself and Senator McConnell, offered the following substitute amendment:

> That the Congress hereby disapproves of the determination of the President with respect to Panama as contained

5383-3

in the certification required by Section 481(h) of the Foreign Assistance Act of 1961, received by the Congress on March 2, 1987; unless the President (1) formally notifies the appropriate committees of the Congress, in writing, within 15 days from the date of enactment of this resolution into law, that he will re-examine the certification of March 2, 1987, with respect to Panama; and (2) shall provide such committees in writing within 90 days following such notification with the detailed results of the re-examination, including (a) the definition of the term "full cooperation" as contained in P.L. 99-570; (b) any non-drug interdiction and eradication matters which he took into consideration in making the certification with respect to Panama on March 2, 1987; and (c) a detailed description of the programs which the Government of Panama has undertaken or will undertake within the next 60 days in order to correct any deficiencies in its drug interdiction and eradication efforts.

Senator Kerry offered the following modification to the Dodd/McConnell amendment:

Section (A). That the Congress thereby disapproves of the determination of the President with respect to Panama as contained in the certification required by Section 481(h) of the Foreign Assistance Act of 1961, received by the Congress on March 2, 1987; unless the President (1) formally notifies the appropriate committees of the Congress, in writing, within 15 days from the date of enactment of this resolution into law, that he will re-examine the certification of March 2, 1987, with respect to Panama; and (2) shall provide such committees in writing within 90 days following such notification with the detailed results of the re-examination, including (a) the definition of the term "full cooperation" as contained in P.L. 99-570; (b) any non-drug interdiction and eradication matters which he took into consideration in making the certification with respect to Panama on March 2, 1987; and (c) a detailed description of the programs which the Government of Panama has undertaken or will undertake within the next 60 days in order to correct any deficiencies in its drug interdiction and eradication efforts.

Section (B)(1). Notwithstanding any other provision of law, U.S. assistance for FY 1987 for Panama allocated pursuant to Section 653(1) of the Foreign Assistance Act of 1961, shall be withheld from obligation and expenditure if Congress within 30 days from the receipt of such report provided pursuant to section A(2) has enacted a joint resolution disapproving the findings of such reports; (2) any such joint resolution introduced pursuant to (1) shall be considered in the Senate in accordance with the provisions of Section 601(b) of the International Security Assistance and Arms Export Control Act of 1976; and (3) for the purpose of expediting the consideration and enactment of any such joint resolution introduced pursuant to (1), a motion

to proceed to its consideration after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

The Kerry modification to the Dodd/McConnell substitute failed by a vote of 6 to 13. The following Senators voted yea: Sarbanes, Kerry, Helms, Pressler, Murkowski, and Trible. Those voting nay were Senators Pell, Biden, Cranston, Dodd, Simon, Sanford, Adams, Moynihan, Lugar, Kassebaum, Boschwitz, Evans, and McConnell.

The Dodd/McConnell amendment was then adopted by the committee by a 15 to 4 vote. Those voting yea were Senators Pell, Biden, Sarbanes, Cranston, Dodd, Simon, Sanford, Adams, Moynihan, Lugar, Kassebaum, Boschwitz, Trible, Evans, and McConnell. Those voting nay were Senators Kerry, Helms, Pressler, and Murkowski.

The committee then agreed to report favorably to the Senate S.J. Res. 91, as amended, by a vote of 15 to 4. The Members voting in the affirmative were Pell, Biden, Sarbanes, Cranston, Dodd, Simon, Sanford, Adams, Moynihan, Lugar, Kassebaum, Boschwitz, Trible, Evans, and McConnell. Those opposed were Senators Kerry, Helms, Pressler, and Murkowski.

COST ESTIMATE

In accordance with Rule XXVI, paragraph 11(a) of the Standing Rules of the Senate, the committee estimates that the passage of S.J. Res. 91 will create no additional costs in this or the next 5 fiscal years. The time constraints concerning this joint resolution made it "impracticable" to obtain a cost estimate from the Congressional Budget Office.

REGULATORY IMPACT

In accordance with Rule XXVI, paragraph 11(b) of the Standing Rules of the Senate, the committee has evaluated the regulatory impact of this joint resolution and has concluded that it provides for no new regulatory activity.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the committee notes that no changes in existing law are made by this joint resolution.

ADDITIONAL VIEWS OF MESSRS HELMS AND KERRY

We are deeply concerned about this year's process of certification under the provisions of the Anti-Drug Abuse Act of 1986. This is the first year in which the new certification process has been undertaken in order to implement this legislation which was passed unanimously in the Senate. Now is the time for firm action to implement this legislation, to maintain its integrity, and to preserve the vital role of Congress in the certification process.

The State Department's performance in the certification process constitutes an affront to the Congress and to the American people. Rather than present an honest certification to Congress, the State Department has chosen to obfuscate its responsibilities and public trust by engaging in what amounts to a cover-up of official corruption and narcotics trafficking in Mexico, Panama, and the Bahamas. Our Customs service was entirely cut out of the certification process by the Department of State in order to facilitate certification of Mexico, Panama, and the Bahamas.

This central issue before us is not whether foreign aid will be cut off to a country as provided for in the law. The central issue before us is not whether there will be ruffled feelings on the part of governments not certified. The central issue before us is not the convenience of the Department of State. The central issue before us is whether or not the Administration and Congress is serious about the war against drugs. The central issue before us is whether the government of the United States is making a serious and substantive effort to halt the flow of drugs into the United States or whether we are engaged in a phoney war against drugs. Engaging in cover-ups on any issue is intolerable and it is particularly intolerable in the area of narcotics interdiction and enforcement.

Owing to our deep concerns about maintaining the integrity of the certification process and about preserving the role of Congress in this process, the distinguished Senator from Massachusetts (Mr. Kerry) and I introduced resolutions of disapproval against the certification of Mexico, Panama, and the Bahamas as having "cooperated fully" with the United States in international narcotics matters. We do not believe that the facts support such a certification.

Under the provisions of the Anti-Drug Abuse Act of 1986, countries must be certified as having "cooperated fully"in three areas: crop eradication, interdiction of traffickers, and money laundering. Unless countries have "cooperated fully" and I stress the phrase "cooperated fully," they are subject to stiff sanctions as provided for in the Anti-Drug Abuse Act of 1986. Under the law, considerations of "vital national interests" may outweight the lack of full cooperation and certification is allowable on this basis.

Laos and Lebanon have been certified this year on the basis of vital national interests even though they are not cooperating fully with our international narcotics efforts. Laos was certified owing to

sensitive bi-lateral discussions regarding POW and MIA issues. Lebanon was certified because it is Syria which controls the Bekaa Valley and the narcotics trade there. Massive amounts of Hashish and opium are produced in the Bekaa Valley and a number of observers believe that this was a major factor in Syria's decision to invade and to occupy this lucrative drug producing area. The government of Lebanon exercises no control over the Bekaa Valley which is under Syrian occupation.

The provisions of the Anti-Drug Abuse Act with respect to certifications and to Congressional action are clear. The law states that the President must certify to Congress that "during the previous year that country has cooperated fully with the United States, or has taken adequate steps on its own, in preventing narcotic and psychotropic drugs and other controlled substances produced or processed, in whole or in part, in such country or transported through such country, from being sold illegally within the jurisdiction of such country to United States Government personnel or their dependents or from being transported, directly or indirectly, into the United States and in preventing and punishing the laundering in that country of drug-related profits or drug-related monies."

The law states that certification includes giving consideration "to whether the actions of the government of the country have resulted in the maximum reductions in illicit drug production which were determined to be achievable." Consideration is to be given to whether such government "has taken the legal and law enforcement measures to enforce in its territory, to the maximum extent possible, the elimination of illicit cultivation and the suppression of illicit manufacture of and traffic in narcotic and psychotropic drugs and other controlled substances, as evidenced by seizures of such drugs and substances and of illicit laboratories and the arrest and prosecution of violaters involved in the traffic in such drugs and substances significantly affecting the United States."

The law states that consideration is to be given to whether such government "has taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, the laundering in that country of drug-related profits or drug-related monies."

Now is the time to send a strong signal to those governments who are not fully cooperating with us. It is not the time to try to cover up their lack of full cooperation and sweep under the rug their glaring lack of regard for the destruction of our youth by drug abuse and addiction. In simple terms, the United States is the target of one of the most scurrilous of criminal activities directed against our citizens and our institutions in recent memory. That was the driving force behind overwhelming enactment into law of the Anti-Drug Abuse Act.

If the State Department wants to certify Mexico, the Bahamas, and Panama, then it should do it not on the basis of their having "cooperated fully" but on the basis of overriding national interests. It is not fair to the American people to give the impression that these three countries have "cooperated fully" with us when they have not. Any number of press reports as well as a substantial amount of information—both classified and unclassified—available to our government clearly indicate the lack of cooperation of these

three governments in international nacrotics matters and, indeed, official corruption at the highest levels.

If the State Department wants to certify Mexico owing to overriding economic factors involved in the debt issue, or to certify the Bahamas owing to our naval arrangements with that government, or to certify Panama owing to the basing there of our Southern Command, then so be it. But I, for one, resent the State Department's trying to pull a fast one on Congress and the American people by foisting on us the patent myth that these governments have "cooperated fully" with the United States.

As for Mexico, 5 unclassified and classified hearings here in the Committee—Foreign Relations as well as ample press coverage have revealed gross corruption and involvement in drug trafficking at all levels of law enforcement agencies including governors of Mexican states and other high officials. For its part, the House of Representatives has carefully reviewed the situation in Mexico. Just last year, the House Select Committee on Narcotics Abuse and Control found, and I quote,

> the situation along the U.S.-Mexican border totally out of control and threatening, not only to the region itself, but to the entire country.

There have been no prosecutions for the brutal murders of DEA agent Enrique Camarena or for the torture of U.S. DEA agent Victor Cortez. We have been informed that the Customs Service has received no cooperation from Mexico on any drug interdiction case for the past two years. As recently as one week ago, Mr. Huerta-Perez, a Mexican Customs official, was arrested by DEA agents in El Paso, Texas on charges of running Mexican produced marijuana into the United States.

Even casual observers know that the Panama Defense Forces (PDF) control the levers of power in Panama. Dozens of press accounts over the past year have pointed out the role of the PDF and General Noriega in drug trafficking and in money laundering. Panama, as well as Mexico and the Bahamas, is a major transhipment point for cocaine from South America into the United States.

There are more than 125 banks in Panama with more than 30 billion in deposits. It is a situation made to order for criminals with large amounts of American cash to launder. The Panamanian banking system is high on secrecy and low on accountability. Bank secrecy laws protect criminals against disclosure. Both the Customs Service and the DEA confirm that the problem of drug money being laundered in Panama is increasing and not decreasing.

As an indication of the vast amount of drug money flowing through Panama, the National Bank of Panama transferred over $1.5 billion to the Federal Reserve Bank in Miami last year. Some estimates conclude that as much as fifty percent of these dollars were from illicit narcotics trafficking and had been laundered through Panama.

Senators should know that Panama last year broke off negotiations with the United States over a Mutual Legal Assistance Treaty which is essential to crack down on money laundering. The State Department points to the Panama drug legislation passed on

December 30 of last year as cooperation and softpeddles the lack of progress on the Mutual Legal Assistance Treaty.

The certification process means full cooperation over the preceeding twelve month period not potential cooperation over the coming year. The process is retrospective not prospective. A law passed in Panama one day before the end of last year can hardly be taken as an example of full cooperation and we will have to carefully examine the effectiveness of this new law over the course of this year in order to make a determination as to its value in enforcement.

There are any number of glaring cases which reflect corruption at the highest levels of the Panamian government and involvement in drug trafficking. Last year, one of General Noriega's personal pilots was killed allegedly over a drug deal gone sour. Two more of his personal pilots are currently in U.S. jails serving time for involvement in drug trafficking.

The former Secretary-General of the Panamanian Defense Forces, Col. Julian Melo, who has been one of General Noriega's closest advisors, was caught smuggling large quantities of ethyl ether into Panama from there into Colombia. This chemical is used in the production of cocaine and is considered an important indicator in cocaine investigations. Col. Melo was discharged from the PDF, but he was never prosecuted for his involvement in smuggling this chemical which is so critical to cocaine manufacturing. He lives openly in comfortable retirement in Panama. In addition to his smuggling operations, the Customs Service has confirmed that he received over $2 million for protection of illegal narcotics operations in Panama and was never tried for this.

The veterinarian who takes care of the President of Panama's horses, Sebastian Gonzalez, is wanted in Costa Rica where there is a warrant for his arrest for narcotics trafficking. He lives openly in Panama and has avoided prosecution.

The former Vice-Minister for Health of Panama, Dr. Hugo Spadafora, was brutally murdered in 1985 in Panama, allegedly by members of the PDF. Former National Security Council advisor, Norman Bailey, who has testified before this Committee, has stated that there is evidence that Spadafora's murder was arranged at a meeting in Peru attended by top international drug traffickers and General Noriega. He was murdered and beheaded a month later. Dr. Spadafora had been engaged in an effort to awaken the Panamanian people about official corruption in drug trafficking. He had accused General Noriega of being directly involved in profiting from drug trafficking. The case about Dr. Spadafora's murder was closed last year with no credible investigation or prosecution.

Just two weeks ago, the New York Times published a major article by its correspondent Alan Riding concerning the cocaine billionaires of Colombia. In the article, Riding points out that the top Colombian drug mafia members meet clandestinely in Panama. This could only occur with the knowledge and protection of the Panama Defense Forces.

The certification of the Bahamas for "full cooperation" is another example of the State Department's obfuscation of the responsibility for an honest certification. Just two weeks ago, the Washington Times ran a front page story which reported that the State

Department told the FBI to halt a sting operation against Prime Minister Pindling. Apparently, the Justice Department has developed sufficient evidence against Pindling to merit such an FBI effort. The assistant U.S. attorney, Richard Gregorie, who has handled many of the government's major drug cases in Miami stated that, and I quote,

> I can tell you point-blank, the State Department's position is far different than ours. Our position is flatly to prosecute felons. The State Department's general position is we are supposed to have good relations overseas, not upset the equilibrium.

Official corruption in the Bahamas was so serious that a Royal Commission of Inquiry was established in 1984 to investigate the situation. The Royal Commission cited a number of officials deemed to be corrupt but there have been no charges or prosecutions made yet. Our U.S. attorney in South Florida made 13 extradition requests in late 1985 and none of these requests has yet been honored by the government of the Bahamas. It is certainly no secret that Robert Vesco operated extensive drug operations out of the Bahamas and that major cocaine traffickers from Colombia and elsewhere freely operate out of the Bahamas.

Just recently, NBC News broadcast a Special Segment uncovering drug trafficking in the Bahamas. In addition to film clips from the U.S. Customs Service showing cocaine drops from aircraft over the Bahamas was an interview with a former member of the Bahamanian Parliament. The parliamentarian expressed amazement at the lack of U.S. concern for corruption in the Bahamas. Other film clips showed the notorious cocaine trafficker Carlos Lehder, who is now under detention in Florida, at Norman's Cay in the Bahamas. It is clear that such official corruption is indeed impeding full cooperation in halting the flow of drugs to the United States.

The scourge of narcotics abuse is destroying American youth. It is destroying the fabric of family life. It is subverting traditional American values. It is eroding our domestic peace and tranquility by escalating violent crime across the country. Firm action is required today in order to prevent the situation from getting still further out of control. The Anti-Drug Abuse Act of 1986 was a major legislative step forward in the war against drugs. The integrity of this legislation must be maintained and the role of Congress in the certification process must be preserved in order that an effective response to the narcotics threat can be successful.

JESSE HELMS.
JOHN F. KERRY.

○